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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON  
AT YAKIMA

JOSEPH A. PAKOOTAS, an  
individual and enrolled member of the  
Confederated Tribes of the Colville  
Reservation; and DONALD R.  
MICHEL, an individual and enrolled  
member of the Confederated Tribes of  
the Colville Reservation, and THE  
CONFEDERATED TRIBES OF THE  
COLVILLE RESERVATION,

Plaintiffs,

And

STATE OF WASHINGTON,

Plaintiff-Intervenor

v.

TECK COMINCO METALS, LTD., a  
Canadian corporation,

Defendant.

NO. CV-04-0256-LRS

STIPULATION AND SECOND  
AMENDED PROTECTIVE ORDER  
PROVIDING FOR "ATTORNEY'S  
EYES ONLY" DESIGNATION OF  
DOCUMENTS CONCERNING  
TRIBAL CULTURAL RESOURCES

**I. STIPULATION**

Plaintiffs Joseph A. Pakootas, Donald R. Michel, and the Confederated  
Tribes of the Colville Reservation ("Tribes"), Plaintiff and Counterclaim  
Defendant State of Washington ("State"), and Defendant and Counter-Claimant

SECOND AMENDED  
PROTECTIVE ORDER - 1

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1 Teck Cominco Metals Ltd. ("Defendant" or "Teck") (collectively, "the Parties"),  
2 respectively submit the following Stipulation and Proposed Second Amended  
3 Protective Order for consideration and entry by the Court.  
4

## 5 **II. FACTUAL BACKGROUND**

6 On November 19, 2009, the Court entered a Protective Order providing a  
7 means of designating certain documents as confidential. *See* Court Docket No.  
8 406. On July 6, 2010, the Court entered an Amended Protective Order, which  
9 provides a mechanism for the parties to designate documents containing "trade  
10 secrets, proprietary, and commercially sensitive materials" for "Attorneys Eyes  
11 Only" treatment. *See* Court Docket No. 423.  
12

13 Since that time, the State's Historical Preservation Officer has identified  
14 documents in the State's possession that are potentially responsive to Teck's  
15 discovery requests, and which concern historical Tribal resources, cultural sites,  
16 and religious practices. Release of the information contained within these  
17 documents may result in a significant invasion of privacy, risk of harm to historic  
18 resources, and may impede the use of a traditional religious sites by the Tribes.  
19 *See* The National Historical Preservation Act, 16 U.S.C. § 470w-3 (providing that  
20 a Federal agency or other public official "shall withhold from disclosure to the  
21 public, information about the location, character, or ownership of a historic  
22 resource if the Secretary and the agency determine that disclosure may (1) cause a  
23  
24  
25  
26

1 significant invasion of privacy; (2) risk harm to the historic resource; or (3) impede  
 2 the use of a traditional religious site by practitioners.")

3  
 4 Accordingly, the parties request that the Court issue the following Second  
 5 Amended Protective Order to provide a mechanism for protecting Tribal Cultural  
 6 Resources.

### 8 **III. SECOND AMENDED PROTECTIVE ORDER**

9  
 10 The Protective Order issued by the Court on November 19, 2009, and the  
 11 Amended Protective Order issued by the Court on July 6, 2010, shall be amended  
 12 as follows:

#### 13 DESIGNATION OF HISTORICAL TRIBAL CULTURAL RECORDS AND 14 MATERIALS FOR "ATTORNEY'S EYES ONLY" TREATMENT

15  
 16 48. Material containing information about the location, character, or  
 17 ownership of a historic resource may be designated for "Attorney's Eyes Only"  
 18 treatment pursuant to Paragraphs 38 through 47 of this Second Amended Order, or,  
 19 if the information is of a highly sensitive nature, may be redacted, if the State  
 20 Historic Preservation Officer, after notice and coordination with the appropriate  
 21 Tribal Historic Preservation Officer and consultation with and concurrence from  
 22 the Secretary of the Interior, determines that disclosure may cause a significant  
 23  
 24  
 25  
 26

1 invasion of privacy, risk harm to the historic resource, or impede the use of a  
2 traditional religious site by practitioners.

3  
4 49. Except as specifically modified in paragraph 48 of this Second  
5 Amended Order, the November 19, 2009 Protective Order and the July 6, 2010  
6 Amended Protective Order shall remain unchanged.  
7

8  
9 SO ORDERED as the date of execution.

10 Dated this 3<sup>rd</sup> day of November, 2010.  
11

12 *s/Lonny R. Suko*

13 \_\_\_\_\_  
14 Lonny R. Suko  
15 Chief United States District Court Judge

16 SO STIPULATED as of the date of execution.

17 DATED this 29th day of October, 2010.  
18

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**WRITTEN ASSURANCE**

I, \_\_\_\_\_

declare as follows:

I have read the Supplemental Protective Order (Order) dated

\_\_\_\_\_ of record in the above-referenced matter.

I agree to comply with and be bound by the provisions of the Order;

I will keep in confidence, and will not divulge to anyone other than those permitted to have access under the terms of said Order, copy, or use except solely for the purposes of this Litigation, any information, documents, or tangible things designated "Attorney's Eyes Only" under the Order;

I hereby agree to keep any and all knowledge and information related to Tribal subsurface mineral depositions, mining activities, practices, and the like in

1 the strictest confidence, and will not use this information or knowledge in any form  
2 or fashion beyond this litigation.

3  
4 I hereby agree to keep any and all knowledge and information related to the  
5 location, character or ownership of a historic cultural resource designated for  
6 "Attorney's Eyes Only" treatment in the strictest confidence and will not use or  
7 disclose this information or knowledge in any form or fashion beyond this  
8 litigation.

9  
10 I hereby consent to venue and jurisdiction in the United States District  
11 Court, Eastern District of Washington at Yakima with regard to any proceeding to  
12 enforce the terms of this Order. I realize that any violation of the Order may  
13 subject me to sanctions by the Court, including punishment for civil contempt.

14  
15 I declare under penalty of perjury that the foregoing is true and correct.

16 Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

17  
18  
19 Signature\_\_\_\_\_